

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROY LEE BOSWELL, #2160822 §
VS. § CIVIL ACTION NO. 6:17cv329
SMITH COUNTY JAIL, ET AL. §

ORDER OF DISMISSAL

Plaintiff Roy Lee Boswell, a former prisoner confined within the Texas Department of Criminal Justice (TDCJ), proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit complaining of alleged violations of his constitutional rights. The case was referred to the United States Magistrate Judge, the Honorable Judge John D. Love, pursuant to 28 U.S.C. §636(b)(1) and (3) as well as the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On April 10, 2019, Judge Love issued a Report, (Dkt. #70), recommending that Plaintiff's civil rights lawsuit be dismissed, without prejudice, for his failure to prosecute his case. Specifically, Judge Love found that Plaintiff failed to prosecute his case because he failed to inform the Court of his whereabouts and failed to communicate with the Court since September 2018. A copy of this Report was sent to Plaintiff at his last known address; return receipt requested. However, the Report was returned as "undeliverable," with a notation of "discharged," (Dkt. # 71). Plaintiff has not filed objections to the Report and, more importantly, has still failed to prosecute his case.

Because Plaintiff has failed to file objections to Judge Love's Report, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except

upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #70), is **ADOPTED** as the opinion of the Court. Further, it is

ORDERED that the above-styled civil action is **DISMISSED**, without prejudice, for Plaintiff's failure to prosecute. Moreover, it is

ORDERED that statute of limitations in this case be suspended for a period of ninety (90) days from the date of entry of final judgment in this case, with such suspension affecting only claims which were not barred by limitations as of May 22, 2017, the date the original underlying complaint was signed. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** **May 10, 2019.**



Ron Clark, Senior District Judge